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ABSTRACT

This report analyzes the content of State regulations for determining student eligibility for services under the Individuals with Disabilities Education Act. The Federal law and regulations set a basic standard for the design and delivery of special education, and each State has adopted its own laws and regulations to supplement the Federal requirements. The Federal regulations analyzed are those with implications for the initial entry into special education, sometimes referred to as the "protection in evaluation" requirements that are applicable to the process of determining the presence of a disability. Analysis of State plans and regulatory documents revealed few differences between State and Federal regulations with respect to protection in evaluation requirements. Differences in the wording of State and Federal regulations can be characterized as more prescriptive on the part of the State, by including the types of assessments to be conducted, the specific individuals considered qualified to administer assessments, and the composition of the team designated to make the eligibility decision. The naming of assessment instruments to be used is not common among States, but 34 States do have additional assessment regulations based upon the category of disability. Two appendices provide a data summary and a list of State source documents. (JDD)

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ELIGIBILITY DETERMINATION IN SPECIAL EDUCATION: A REVIEW OF STATE REGULATIONS PERTAINING TO PROTECTION IN EVALUATION

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Executive Summary

The requirements of the Individuals with Disabilities Education Act (IDEA) have been defined by the courts as a "federal floor" for the education of students with disabilities. The Act provides protections to children and their parents and distribution of funds to States for implementation of special education and related services. The education of students with disabilities is, therefore, a joint Federal-State responsibility. The Federal law and regulations set a basic standard for the design and delivery of special education, and each State has adopted its own laws and regulations to implement the Federal requirements.

Student eligibility for services under the IDEA requires that there be demonstration of a disability and that the student needs special education because the disability has an adverse impact on the student's educational performance. States differ from each other with respect to the standards and procedures they have designed for the determination of eligibility. While all States satisfy the requirements of the Federal law, some States have adopted different (but synonymous) wording in establishing their regulations, and some have included additional requirements for the establishment of eligibility.

There is very little information available that analyzes and contrasts the specific content of State and Federal requirements. This analysis of the content of State regulations for determining eligibility as they implement the Federal regulations was carried out to provide information on this topic.

The data used in the study involved only those Federal regulations with implications for the initial entry into special education, specifically, 34 C.F.R. §300.530(b) and 300.532(a) through (f). These are sometimes referred to as the "protection in evaluation" requirements that are applicable to the process of determining the presence of any type of disability. Other Federal regulations related to re-evaluation (§300.534) and a section entitled, *Additional Procedures for Evaluating Children With Specific Learning Disabilities* (§300.540 through §300.543) were not included in this analysis.

Two data collectors worked together to perform a content analysis of State Plans and regulatory documents from 50 States and the District of Columbia with respect to the selected Federal requirements. A determination was made as to whether or not the wording in State regulation was identical or similar in meaning to the Federal regulation. To more fully explore how States provide specific direction to local education agencies, the source documents were also reviewed for answers to two general questions: a) Were specific assessment instruments named in the regulation? and, b) Did the assessment procedures prescribed in the regulation differ by disability?

The analysis revealed that there are not many differences between State and Federal regulations with respect to protection in evaluation requirements. The findings were summarized using descriptive statistics as well as specific case examples from the regulation review. Though few in number, the differences in the wording of State and Federal regulations can be

characterized as more prescriptive on the part of the State. The areas in which some States provide more specific direction than the Federal requirements include the types of assessments to be conducted during the eligibility determination process, the specific individuals considered qualified to administer those assessments, and the composition of the team designated to make the decision on eligibility. With respect to the two additional questions posed, it was found that the naming of assessment instruments to be used in the initial evaluation of a child is not common among States, but thirty-four States do have additional assessment regulations based upon the category of disability. (It is noted that this statement pertains to disabilities *other than* specific learning disabilities for which all States have separate provisions in accordance with the Federal regulations.)

On the basis of this study, it is clear that, with the exception of the additional requirements for specific learning disabilities, Federal and most State regulations afford practitioners wide latitude to adopt assessment techniques according to their professional judgment as long as those measures do not violate the basic protections of the IDEA.

ELIGIBILITY DETERMINATION IN SPECIAL EDUCATION: A REVIEW OF STATE REGULATIONS PERTAINING TO PROTECTION IN EVALUATION

Introduction

Programs and services in special education are made available to children on the basis of their eligibility determined in accordance with Federal and State laws and regulations. Access to a free appropriate public education (FAPE) is based on a determination of need for special education or *eligibility* as this concept has been codified in Federal and State statutes and regulations. The Individuals with Disabilities Education Act (IDEA) and the regulations that implement it have established the framework for evaluating students[1] and providing special education programs and services for those found to be so entitled. Eligibility under IDEA requires that there be demonstration of a disability and that the student needs special education because the disability has an adverse impact on the student's educational performance.

The IDEA sets forth protections in the determination of eligibility in 20 U.S.C. 1412(5)(c) which states that "procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child." This statutory provision and the implementing regulations in 34 C.F.R. 300 form the basis for conducting evaluations to determine a child's eligibility for special education.

As in many other areas, States differ from each other and from Federal requirements in some of the specifications that must be met to decide that a child is entitled to the services and rights reserved for students with disabilities. All States' regulations comply with the basic Federal requirements, but some States have used different wording and/or included additional requirements in their special education regulations. As these requirements have been implemented over time, practices at the school level have become institutionalized. In many instances, the connection between an individual special educator's routine procedures and the provisions in law or regulation that may have originally inspired the choice of those techniques have become blurred. As a result, many established practices are perceived as specifically mandated by regulation when, in fact, they are not. There is very little information available that analyzes the specific content of State and Federal requirements. This analysis of the content of State regulations for determining eligibility as they exactly mirror or expand upon the Federal regulations was carried out to meet a need for data that could be used to inform the debate about the role of regulations in facilitating or blocking the reform movement in education.

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[1]Federal regulations define "evaluation" as follows: "procedures used in accordance with §§300.530-300.534 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade or class" [§300.500(c)]. Assessment is a synonymous term also used to denote the individual evaluation required for special education eligibility. Throughout this analysis, these terms are used interchangeably and always refer to an individual student and not in any way to program evaluation, a different requirement under the law.

Background

The IDEA (originally the Education for All Handicapped Children Act passed in 1975) was designed to "assist State and local efforts to provide programs to meet the educational needs of children with disabilities in order to assure equal protection of the law" [20 U.S.C. 1400(b)(9)]. This aspect of the Federal law has been consistently described by the courts as "a minimum—a federal floor below which our nation could not in conscience permit the education of handicapped children to fall..."(*Conklin v. Anne Arundel County Board of Education* [946 F2d 306; 4th Cir. 1991]). This decision quotes the well known *Rowley* case stating that "Congress' intention was not that the Act displace the primacy of the States in the field of education, but that States receive funds to assist them in extending their educational systems to the handicapped." The 4th Circuit decision further notes that the IDEA "can properly be regarded as a statute born of federalism: the Act sets a federal minimum to be complied with by the States regarding the provision of educational services to handicapped children, but it also gives the States considerable freedom to structure educational programs that exceed this federal benchmark" (18 IDELR 197[2]). The *Conklin* decision cites a number of examples in which States exceed the requirements of the Federal statute, particularly the Maryland Code that allows school boards to adopt programs "that exceed state standards." Courts have consistently stressed the paramount role of the States in the area of education as a right reserved under the U.S. Constitution and have upheld State standards that are more rigorous that the Federal standard.[3] The *Conklin* decision also notes, interestingly, that the Iowa and Arkansas legislatures changed their State laws to retract provisions that set a more expansive standard than the Federal criterion.

Given the joint nature of Federal-State responsibility, this study of eligibility requirements for special education describes the various ways in which States have designed their protection in evaluation procedures to meet Federal regulations.

Method

Elements of Federal Regulation Used in the Analysis

Because the focus of this study was on individual assessment for the purpose of determining eligibility under IDEA, only those Federal regulations with implications for the initial entry of students into special education were used. Table 1 lists these regulations, identifies their location in the *Code of Federal Regulations* (34 C.F.R Part 300), and provides a descriptive title that will be used to refer to the regulation elsewhere in this report.

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[2] *Individuals with Disabilities Education Law Report, 18*, p. 197)

[3] See especially the decision in *Stock v. Massachusetts Hospital School*, 392 Mass. 205, 211, 467 N.E.2d 448, 452 (1984), *cert.denied*, 474 U.S. 844 (1985) in which the Courts ruled that the State Department of Education must administer special education programs "to assure the maximum possible development of children with special needs" in accordance with a provision of the Massachusetts special education law known as Chapter 766.

Table 1
Elements of Federal Regulation Concerning Student Evaluation Used in This Study

34 C.F.R.	Federal Wording	Title
300.530(b)	Testing and evaluation materials and procedures used for the purposes of evaluation and placement of children with disabilities must be selected and administered so as not to be racially or culturally discriminatory.	*nondiscrimination*
300.532(a)(1)	Tests and other evaluation materials are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.	*native language*
300.532(a)(2)	Tests and other evaluation materials have been validated for the specific purpose for which they are used.	*proper validation*
300.532(a)(3)	Tests and other evaluation materials are administered by trained personnel in conformance with the instructions provided by their producer.	*proper administration*
300.532(b)	Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.	*educational need assessment*
300.532(c)	Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).	*accurate measurement*
300.532(d)	No single procedure is used as the sole criterion for determining an appropriate educational program for a child.	*multiple procedures*
300.532(f)	The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.	*suspected disability assessment*
300.532(e)	The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.	*evaluation team composition*

As can be seen from the table, the majority of the Federal requirements used in this study are from Section 300.532 (Evaluation Procedures), sometimes referred to as the "protection in evaluation" requirements, applicable to the evaluation process used to determine the presence of any type of disability. The Federal regulations also contain further evaluation specifications in a section entitled, *Additional Procedures for Evaluating Children With Specific Learning Disabilities* (§300.540 through §300.543). All States have included these additional requirements in their regulations pertaining to learning disabilities. It is important to note that regulations related to re-evaluation (§300.534) and the extra requirements that concern the evaluation of children with specific learning disabilities were considered to be beyond the scope of this analysis and were not included in this study.

Data Collection

Two data collectors worked together to perform a content analysis of State Plans and regulatory documents from 50 States and the District of Columbia[4]. Using the elements of the Federal evaluation regulations listed in Table 1, a determination was made as to whether or not the wording in State regulation was different from the Federal regulation. The State requirement was considered to be the same as the Federal regulation if identical words or words with the same meaning were used. Before the data for each State were recorded, agreement was reached between the two data collectors as to whether the State regulations were the same as or different from Federal regulations.

The same source documents also were reviewed for answers to two general questions: a) Were specific assessment instruments named in regulation? and, b) Did the assessment procedures described in regulation differ by disability (excluding Specific Learning Disability)? These additional questions were posed in an effort to explore more fully how SEAs modify the general evaluation protections of the IDEA in order to provide specific direction to local education agencies.

Results Pertaining to the Protection in Evaluation Requirements

There were not many differences between State and Federal regulations with respect to protection in evaluation requirements. Where differences occurred, they were mainly with respect to the elements entitled, *proper administration, suspected disability assessment*, and *evaluation team composition*. The majority of differences between State and Federal regulations reviewed for this study might be characterized as more prescriptive at the State level. In other words, the State regulations are similar to the Federal in intent (i.e., degree of protection), but they include procedural requirements for ensuring the protection. In some cases, States have expanded the protections applicable to the initial assessment for IDEA eligibility.

At a more stylistic level, a number of States have chosen to combine Federal regulations, for example those pertaining to nondiscrimination and native language, into a single State regulation. Also some States reiterate within their sections on evaluation Federal regulations found elsewhere, such as professional qualifications.

Quantitative Data Summary

A quantitative look at the data resulting from this study shows:

- Forty-three percent (22) of the States word their requirements under *suspected disability assessment* differently from Federal regulation.

[4] The documents used for this study are part of the paper library or State Policy Database available at the National Association of State Directors of Special Education. At minimum, the documents were current as of 1992.

- Thirty-five percent (18) of the States have modified their regulation addressing the *evaluation team composition* as compared to the Federal requirement.

- In the area of regulation covering *proper administration*, 12 States have adopted wording that varies to some degree from Federal regulation.

- The rest of the protection in evaluation regulations reviewed for this study were modified by 9 or fewer States. Appendix A contains a summary of the data for each element addressed in this analysis.

- Although 43 of the 51 SEAs have regulations that diverge, at least minimally, from the Federal requirements, only two States were found to alter a majority (5) of the 9 elements in this study. Eight States were found to repeat the Federal regulations exactly for all elements.

In most instances, State regulation pertaining to evaluation protections do not vary significantly from the Federal regulations of the IDEA. However, specific examples of alternative wording can be useful to State and local administrators looking for emerging trends and best practices. The remainder of this section will provide specific examples of State regulation for each element of the Federal requirement included in this study[5].

Nondiscrimination

300.530(b)	Testing and evaluation materials and procedures used for the purposes of evaluation and placement of children with disabilities must be selected and administered so as not to be racially or culturally discriminatory.

Nine States' regulations pertaining to *nondiscrimination* alter the language used in Federal regulation. Pennsylvania, for example, requires corrective action to remedy the over- or under-representation of minorities if the SEA concludes that the school entity cannot demonstrate that its test materials and evaluation procedures did not result in the over- or under-representation. In Illinois, if the language use pattern of a child involves two or more languages, the child must be evaluated using each of the languages. Psychological evaluations must be performed by a certified school psychologist who has demonstrated competencies in, and knowledge of, the language and culture of the child. Illinois also stipulates that to the maximum extent possible, tests given to a child whose primary language is other than English must be relevant to his/her culture. Five States extend protections under this element by asserting that, in addition to race and culture, testing and evaluation procedures must not result in gender or linguistic discrimination.

[5] Appendix B contains a list of the State regulatory documents from which the examples in this section were drawn.

Native Language

300.532(a)(1)	Tests and other evaluation materials are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.

Eight States have adopted regulations with wording different from the Federal requirements for this element. For the most part, these States have chosen to provide more prescriptive or clarifying language to assure this protection is applied. As an illustration, New Mexico's regulations specify that when a child is not proficient in English, procedures and evaluation materials which allow for maximum use of the primary language must be used. An evaluator proficient in the child's dominant language should be the primary person to evaluate this child. If such personnel are not available, nonverbal tests must be used; interpreters may be used. Similarly, in Oklahoma the examiner must be fluent in both English and the primary language of the child's home, or an interpreter fluent in the primary language of the home must be made available to the examiner. In addition, tests must contain sufficient nonverbal material to make a valid determination of educational functioning.

Arizona Administrative Code states that if a child has been determined to be limited English proficient, the LEA or State-supported institutions must follow one or more of these procedures: a) use an evaluator fluent in the language in which the child is proficient and in English; b) use an interpreter knowledgeable in special education comprehensive evaluation/placement procedures to assist with language and testing, and/or c) use test instruments that do not stress spoken language and which are considered valid and reliable performance measures of functioning.

An excerpt from Colorado regulation on the *native language* requirement provides still another example: Children shall be evaluated in their primary language and/or through the use of nonverbal techniques. Children who cannot read, write, speak or understand the English language as determined through appropriate testing may not be determined eligible for special education services on the basis of criteria developed solely upon the command of the English language.

Proper Validation

300.532.(a)(2)	Tests and other evaluation materials have been validated for the specific purpose for which they are used.

For the element, "*proper validation*," three States modified the wording of the Federal requirement in their own regulation. These changes have included direction as to who is responsible for test validation and/or how this validation should occur. Montana requires that tests and other materials and procedures be properly and professionally evaluated for the specific purposes for which they are used and meet the test of reasonableness in the opinion of competent professional personnel.

New Hampshire regulation assigns the responsibility for the validity, reliability, and appropriateness of the test materials to the evaluator. Also, there must be clear specification of the samples used for both item validation and test standardization. According to New Hampshire regulation,

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general population norms and the references shall be clear and specific, and the mere inclusion of a small number of minority group members in a norming sample shall not make the test "fair" to members of that group.

Proper Administration

300.532(a)(3)	Tests and other evaluation materials are administered by trained personnel in conformance with the instructions provided by their producer.

In response to the Federal regulation focusing on proper administration of evaluation procedures, 12 States included some personnel qualifications in their regulation. Several States' modifications of this element specify the people considered qualified to perform intelligence testing or, more generally, refer to regulations concerning professional standards cited elsewhere. Alabama regulations provide an example of how States have varied the wording of this element. Alabama requires that individual intellectual evaluations be conducted only by psychologists, psychometrists, and counselors qualified to administer such evaluations. Graduate students currently enrolled in approved training programs leading to being qualified to administer individual intellectual evaluations may administer these tests as part of their training if the test is part of a reevaluation, and their written reports are approved and co-signed by a person already qualified.

California regulation makes the stipulation that individual tests of intellectual or emotional functioning be administered by a psychometrist or credentialed school psychologist where available. The Georgia SEA requires that tests and similar evaluation procedures be administered by personnel who meet appropriate certification or licensure requirements under Georgia law.

Washington's regulations contain stipulations applicable to intelligence testing as part of this element. They call for tests designed to measure intellectual functioning to be administered by a qualified psychologist. Cognitive tests for developmentally delayed students, other than an intelligence quotient test, must be administered by a qualified psychologist or by professionals with other titles who have considerable training and experience in individual psychological or psychoeducational assessment.

Educational Need Assessment

300.532(b)	Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

In their regulations, five States mention conditions for using specific types of assessment as part of this requirement. Among those States adding prescriptive language is Maine which mandates an observation of the student in the regular classroom setting or other area. This observation must compare the student's educational performance with other students of comparable age and identify those issues that are adversely affecting the student's ability to benefit from the regular student placement. Alaska rules call for information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. Both

Arizona and Nevada detail the types of assessments used to determine eligibility for each category of disability.

Accurate Measurement

300.532(c)	Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Only three States elaborate to any degree upon this protection in evaluation requirement. Alabama regulations provide one example. In this State, unless the instructions in the test manual for a particular assessment program states otherwise, students with special needs, such as those who are nonverbal, bilingual, hearing or visually impaired, multidisabled, language disordered, etc. must be given individual intellectual and other assessments appropriately developed or modified for their needs. Alabama also requires that a vision and hearing screening be the first assessments conducted.

Multiple Procedures

300.532(d)	No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

This element is sometimes addressed in State regulation in conjunction with the next element, *suspected disability assessment*. Several States have specified more than one assessment domain or type of assessment procedure to be used in the initial evaluation of eligibility. Five States' regulations were found to diverge from the wording of this element in Federal regulation. Maryland regulation, for example, asserts that in addition to the required educational assessment, when appropriate, an assessment of cognitive, emotional, and physical factors shall be provided. Nevada provides specific assessment options or requirements under domains such as adaptive behavior, health, academic achievement, and previous education intervention. The evaluation requirements in Minnesota's regulations include an "environmental review" of the person's functioning in current and anticipated environments in addition to other assessments in areas of suspected disability.

Suspected Disability Assessment

300.532(f)	The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

As was mentioned, this is the element within the Federal protection in evaluation requirements most often modified to some degree by States. In fact, 22 States use alternative wording. In general, States have tended to be prescriptive concerning the areas or broad types of assessments to be conducted during the eligibility process. Some, but not all States, delineated assessment areas by disability.

Texas regulation, for example, requires that the assessment of physical, mental, and emotional conditions include a consideration of the student's functioning in the following six areas: language dominance, language, physical, emotional/behavioral, sociological, and intellectual. The professional responsible for assessing each area must make professional judgements regarding the degree to which assessment in each area is necessary. The Texas regulations go on to state that the specific eligibility criteria for the disability category in question should indicate the minimum intensity of assessment needed in each area, but all six areas must be addressed in the written report to the review committee.

New Jersey has adopted extensive regulation in this area. In this State the initial evaluation consists of an assessment by a school psychologist (psychological assessment), a learning disabilities teacher-consultant (educational assessment), a physician (comprehensive health assessment), and a school social worker (social assessment). The child study team evaluation includes an appraisal of the pupil's current functioning and an analysis of instructional implications of the evaluation results reported by each team member. The child study team evaluation also incorporates standardized tests, where appropriate, and a functional assessment comprised of structured observations, interviews, reviews of records and pre-referral observations, and other informal assessment measures.

Similarly, New York requires, at minimum, a physical examination, an individual psychological examination, a social history, and other suitable evaluations or assessments of factors that may be contributing to the suspected disability. New York also mandates that the evaluation include observation of the pupil in the current educational setting. In addition to citing the assessment areas in Federal regulation, Tennessee requires that a comprehensive vocational assessment be part of the individual assessments of secondary-aged children suspected of having a disability.

In Vermont the team is directed to evaluate all student characteristics that may have a significant influence on eligibility, services to be offered or accommodations to be made, including, but not limited to: a) physical characteristics; b) language characteristics; c) emotional/behavioral characteristics; d) current life circumstances; e) intellectual characteristics and adaptive behavior; and f) current level of performance in all curriculum areas for which specially designed instruction or special accommodations may be required.

Evaluation Team Composition

300.532(e)	The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

The language of this element of the Federal requirement has been modified to some degree by 18 States. For the most part these States specify all or some of the positions, titles, and/or qualifications of people to be included in the multidisciplinary team. For example, Indiana specifies that a school

psychologist be part of the team, along with the teacher or specialist in the suspected disability. In several States, the composition of the team is governed by the category of disability.

Both Wyoming and Wisconsin add prescriptive detail in their State regulation regarding evaluation teams. In neither State does this team function as the IEP team, although in Wisconsin a member of the evaluation team must attend the IEP meeting and Wyoming regulation requires a team member or someone familiar with the evaluation report to attend. Specifically, Wyoming requires that evaluations be conducted by at least: a) person(s) knowledgeable in each area of suspected disability, b) person(s) qualified to administer each test or instrument or procedure included in the child's multidisciplinary evaluation plan, c) person(s) familiar with the child's background and how that background affects the evaluation process or results, d) persons from two or more separate disciplines (one of whom may be a teacher); and e) the child's current regular education teacher or primary care giver. If the child does not currently have a regular education teacher, one evaluator is a regular education teacher or primary caregiver of children of comparable chronological age.

Wisconsin specifies that the evaluation team (M-Team) must include the following: a) an employee of the school board; b) at least two persons who are skilled in assessing children and programming for children with disabilities. At least one of these two persons must be a teacher who is licensed to teach in the area of suspected disability. If a child is suspected to have or is currently identified as having more than one disability, there must be a teacher or teachers on the M-Team who is or are licensed in all of the child's suspected and currently identified disabilities; c) other individuals as needed to evaluate and determine the needs of the child; d) if a child is suspected of needing an occupational therapist, an occupational therapist; and e) if a child is suspected of needing a physical therapist, a physical therapist.

Other States, such as Massachusetts and Montana, require a single multidisciplinary team that completes both the evaluation of a child suspected of having a disability and the IEP, if a disability is identified. Because of its dual role, this team includes, at least, the Federal requirements for the evaluation team (i.e., a teacher or specialist in the area of suspected disability) and the Federal requirements for participants in the IEP meeting (e.g., parents, the child, a special education administrator). In Montana, additional members of the "Child Study Team" are required based upon the area of suspected disability; for example, a school psychologist is required if the child is suspected of having mental retardation or a specific learning disability; a speech pathologist is required for a child suspected of having a speech/language impairment.

Additional Questions Asked of State Evaluation Requirements

Specification of Assessment Instruments

Listing or naming assessment instruments to be used in the initial evaluation of a child suspected of having a disability is not particularly common in State regulation. Only 5 States (10 percent) engage in this practice. New Mexico and Texas, for instance, maintain an approved list of tests. Arkansas and South Carolina specify assessment instruments for each disability category. In Louisiana, the Socio-Cultural Scales of the System of Multicultural Pluralistic Assessment (SOMPA) must be used when the following two conditions exist simultaneously:

- It is necessary to conduct an individual intellectual assessment as a component of a diagnostic assessment, and

- It cannot be clearly demonstrated that the student's background is representative of the socio-economic and socio-cultural heritage of the majority of the sample used in standardizing the intellectual assessment instrument in question.

Specifying particular instruments to be used in the initial evaluation may be a technique adopted by these States to ensure that local entities adhere to their protection in evaluation requirements. Using this strategy, the SEA can approve tests or procedures that are valid, non-biased, and comprehensive.

Assessment Procedures Based on Disability

Thirty-four States (67 percent) do have additional assessment regulations based upon the category of disability[6]. The specification of the regulations range from a list of general assessment tests (e.g., adaptive behavior, general intelligence) or procedures (e.g., classroom observation) to specific instruments, professional standards, and/or the composition of the evaluation team based on the category of disability. The most common practice among these States is to list the type of assessment to be performed and/or the testing criteria that distinguish those children eligible for services under a specific disability category and those who are not.

For example, Minnesota regulation states that a pupil is eligible as having a mild-moderate mental impairment if the pupil meets the criteria of:

- Performance that falls at or below the 15th percentile in four adaptive behavior domains (i.e., personal independent, social, academic, and vocational) in both school and home or community on nationally-normed, technically adequate measures of adaptive behavior; and

- Significantly subaverage intellectual functioning as indicated by an intelligence quotient below 70 plus or minus 1 Standard Error of Measurement (using instruments with a reliability coefficient of .90 or greater) on an intelligence test that is standardized, nationally-normed, technically adequate, and individually administered.

Summary and Conclusion

With the exception of the supplementary section on specific learning disabilities, the regulations implementing IDEA set down baseline requirements for the process to be used in determining eligibility under the Act. Each of the nine provisions covering eligibility procedures is constructed as a general requirement to guide the implementation of the protections included in the Act. Analysis of these "Protection in Evaluation" provisions of the Federal regulations conducted for this study revealed that the

[6] This statement pertains to disabilities **other than** specific learning disabilities (SLD). All States have regulation pertaining to the evaluation of students suspected of having SLD.

majority of States have incorporated the Federal wording on these requirements into their own sets of regulations with little modification.

There were, however, some exceptions to this general conclusion. Thirty-four States were found to have assessment procedures that are differentiated by disability. The most common practice among these States is to list the type of assessment to be performed and/or the testing criteria that distinguish those children eligible for services under specific disability categories from those who are not. The other areas in which some States were found to be more prescriptive than the Federal regulations include the types of assessments to be conducted during the eligibility determination process, the specific individuals considered qualified to administer those assessments, and the composition of the team designated to make the decision on eligibility.

The Federal regulations direct States to establish procedures that provide for special education programs and services with adequate protections for the rights of students and their parents in the process of establishing eligibility for those services. This review of State eligibility requirements has confirmed that States have incorporated into their regulations the broad framework of Federal requirements designed to assure access and protect rights in the process. It may be that the widely held belief that Federal regulations preclude flexibility is derived from an unvarying use of assessment procedures that have become rigid in practice and, as a result, are perceived to be required by the regulations. School personnel may assume that practices institutionalized over long periods are derived from State or Federal regulations and such conclusions may be accepted as fact by others. However, it is clear that, with the exception of the requirement to document a discrepancy between achievement and ability for learning disabilities, Federal and most State regulations afford practitioners wide latitude to adopt whatever assessment practices are appropriate according to their professional judgment as long as those measures do not violate the basic protections of the IDEA.

APPENDIX A

Data Summary for the Protection in Evaluation Elements of the IDEA Regulations

ELEMENT TITLE	NUMBER OF STATES	
	Different from Federal	Same as Federal
Nondiscrimination	9	42
Native Language	8	43
Proper Validation	3	48
Proper Administration	2	39
Educational Need Assessment	5	46
Accurate Measurement	3	48
Multiple Procedures	5	46
Suspected Disability Assessment	22	29
Evaluation Team Composition	18	33

APPENDIX B
Source Documents for Examples of State Protection in Evaluation Requirements

STATE	TITLE OF SOURCE DOCUMENT	YEAR
AL	Rules of Alabama State Board of Education, State Department of Education, Chapter 290-080-090, Special Programs I.	1992
AK	Education For Exceptional Children, Title IV, Chapter 52, Alaska Administrative Code. Special Education Regulations.	1989
AZ	State Board of Education Administrative Rules-- Chapter 2.	1992
AR	Program Standards and Eligibility Criteria for Special Education.	1987
CA	California Special Education Programs: A Composite of Laws. Education Code-- Part 30, Other Related Laws, and California Code of Regulations Title 5.	1992
CO	Rules (for the) Administration Of The Exceptional Children's Education Act.	1992
GA	The Georgia Board of Education Division for Exceptional Students, Chapter 160-4-7, Special Education Regulations and Procedures.	1991
IL	Title 23: Education and Cultural Resources. Subtitle A: Education. Chapter 1: State Board of Education. Subchapter F: Instruction for Specific Student Populations.	1990
IN	Title 511 Indiana State Board of Education, Article 7, Rules 3-16, Special Education Rules.	1992
LA	Regulations for Implementation of the Exceptional Children's Act, R.S. 17:1941 et. seq..	1983, 1991
ME	Special Education Regulations- Chapter 101.	1992
MD	Maryland State Department of Education, Division of Special Education. COMAR 13A.05.01, Programs for Students with Disabilities.	1991
MA	766: Regulations. Massachusetts Department of Education.	1991
MN	Minnesota State Board of Education Special Education Rules. Chapter 3525: Standards and Procedures.	1992
MT	Special Education Reference Manual: Montana Laws and Rules, 1983. Includes revisions through October 1990.	1983, 1990
NV	Nevada Administrative Code for Special Education Programs.	1988

STATE	TITLE OF SOURCE DOCUMENT	YEAR
NH	New Hampshire Standards for the Education of Handicapped Students.	1988
NJ	New Jersey Administrative Code Title 6 Education, Chapter 28, Special Education.	1992
NM	Educational Standards for New Mexico Schools.	1990
NY	Chapter II, Commissioner's Regulations, Subchapter P, Part 200.	1990
OK	Oklahoma Policies and Procedures for Special Education.	1991
PA	Pennsylvania School Laws and Rules (Annotated).	1992
SC	Procedures for Survey, Screening Evaluation, Placement, and Dismissal of Children Into/Out of Programs for the Handicapped.	1978
TN	Tennessee Code Annotated Volume 9.	1990
TX	State Board of Education Rules for Special Education Services (Subchapter G).	1991
VT	State of Vermont Department of Education: Special Education Rules.	1991
WA	State of Washington Rules and Regulations for Programs Providing Services to Children with Handicapping Conditions, Chapters 392-168, 171 and 173 WAC.	1991
WI	Public Instruction Chapter PI 11, Children With Exceptional Needs.	1992
WY	Rules and Regulations Governing Services for Children With Disabilities.	1992